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In re Application of :
HVOLRIS, Jesper et al. :
Application No.: 10/560,844 : DECISION
PCT No.: PCT/DK04/00412 :
Int. Filing Date: 14 June 2004 : ON SUBMISSION UNDER
Priority Date: 17 June 2003 :
Attorney's Docket No.: PLOUG6.001APC : 37 CFR 1.42
For: Device For Preventing Dislocation of Hip Arthroplasty
Implant :
:

This communication is issued in response to applicants' "Response To Decision Regarding Submission Under 37 CFR 1.42" submitted on 27 February 2007. Applicants have submitted a declaration executed on behalf of deceased co-inventor John Bogh Hansen by his heirs (legal representatives). The submission has been treated as a submission under 37 CFR 1.42.

BACKGROUND

On 14 June 2004, applicant filed international application PCT/DK04/00412, claiming a priority date of 17 June 2003. The thirty-month period for paying the basic national fee in the United States expired at midnight on 17 December 2005.

On 15 December 2005, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied, *inter alia*, by the requisite basic national fee.

On 10 July 2006, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the oath or declaration were required.

On 13 July 2006, applicants filed a response to the Notification of Missing Requirements including, an executed declaration of the inventors, surcharge for late filing of the oath or declaration and a three-month extension fee. The declaration was executed by co-inventor, Jesper Hvolris and, Mai Fredslund, Kim Fredslund, Pia Fredslund, Per Fredslund and Anne Fredslund as heirs (legal representatives) for deceased co-inventor John Bogh Hansen.

On 12 January 2007 the Office mailed Decision regarding Submission Under 37 CFR 1.42 rejecting applicants' submission without prejudice. Because the declaration did not include the (1) citizenship of the deceased co-inventor and, (2) a statement that the five heirs listed on the declaration are the only heirs, the Decision concluded that the declaration filed 13 July 2006 did not comply with 37 CFR 1.497(a)-(b).

On 27 February 2007, applicants filed the instant "Response To Decision Regarding Submission Under 37 CFR 1.42" including a supplemental declaration.

DISCUSSION

When an inventor has deceased, 37 CFR 1.42 permits the legal representative (executor, administrator, etc.) of the deceased inventor to execute the necessary oath or declaration and, apply for and obtain a patent.

With respect to the legal representative, MPEP 409.01(a) states that where no legal representative has been appointed or is required to be appointed by law, the application for a patent may also be made by all of the heirs of the deceased. Further, MPEP 409.01(a) states that the heirs need to identify themselves as legal representative of the deceased inventor.

37 CFR 1.497(b)(2) states:

If the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration shall also state that (1) the person is a legal representative and the (2) citizenship, (3) residence and (4) mailing address of the legal representative.

A review of the declaration filed 27 February 2007 shows that Mai Fredslund, Kim Fredslund, Pia Fredslund, Per Fredslund and Anne Fredslund have executed the declaration as the only heirs (legal representatives) for deceased co-inventor John Bogh Hansen and have provided the statement required under item (1).

With regard to items (2)-(4), the residence, mailing address and citizenship of the persons signing on behalf of deceased co-inventor John Bogh Hansen have been provided. Also provided is the citizenship of deceased co-inventor John Bogh Hansen.

The declaration filed 27 February 2007 is deemed acceptable under 37 CFR 1.497 (a)-(b).

CONCLUSION

The declaration filed 27 February 2007 under 37 CFR 1.42 is **ACCEPTED**.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.

Any further correspondence with respect to this matter should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, VA 22313-1450, with the contents of the letter marked to the attention of the PCT Legal Office.



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